

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences



Application Serial No. 09/133,886

Filed: August 13, 1998

Art Unit: 1772

Examiner: N. Ahmed

FASTENER TAPE MATERIAL, BAG UTILIZING FASTENER TAPE MATERIAL,
AND METHOD OF MANUFACTURE THEREOF

Ex parte: James Johnson

BRIEF FOR THE APPELLANT

RECEIVED
MAR 18 2002
TC 1700

03/14/2002 SDENBOB1 00000006 09133886

01 FC:120

320.00 OP

Pitney, Hardin, Kipp & Szuch LLP
Attorneys for the Appellants

I. REAL PARTY IN INTEREST

The real party in interest is assignee Illinois Tool Works Inc.

II. RELATED APPEALS AND INTERFERENCES

Parent application serial no. 08/899,434 is under appeal.

III. STATUS OF CLAIMS

Claims 39, 41 and 72-74 are rejected.

IV. STATUS OF AMENDMENTS

The after-final amendment dated October 1, 2000 (the return postcard was dated October 3, 2000) in response to the after-final Office Action of June 29, 2001 was entered for purposes of appeal pursuant to the Advisory Action of October 17, 2001.

V. SUMMARY OF INVENTION

The present invention is a reclosable tape with a first wall, a second wall and a U-shaped loop joining the first and second walls. The first wall includes a flange section and a reclosable fastener portion connected thereto and matable to a mating fastener connected to the second wall. The mating fastener has a flange juxtaposed thereto and is substantially parallel to an end of the flange. The reclosable tape further

has an inside surface which is treated so as to be non-sealable to the web and an outer surface treated so as to be sealable to the web.

VI. ISSUES

1. Are Claims 39, 41, 72 and 74 anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 4,514,962 (the Ausnit '962 reference)?

2. Are Claims 39, 41 and 72-74 anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 4,528,224 (the Ausnit '224 reference)?

3. Are Claims 39, 41 and 72-74 obvious under 35 U.S.C. §103(a) over the Ausnit '962 reference or the Ausnit '224 reference?

VII. GROUPING OF CLAIMS

The claims are deemed to stand or fall together for each ground of rejection.

VIII. ARGUMENTS

1. Are Claims 39, 41, 72 and 74 anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 4,514,962 (the Ausnit '962 reference)?

Claim 39 recites a tape comprising a first wall, a second wall and a U-shaped loop formed between and joining said first wall to said second wall, said first wall including a flange section, said tape having a reclosable fastener portion connected thereto matable to a mating fastener connected to said second wall, said mating fastener having said flange juxtaposed thereto and being substantially parallel to an end of said flange. The Ausnit '962 reference discloses an arrow head shaped rib and a complementary groove formation (col. 2, lines 44-48). This arrow-head shaped rib and groove formation is mechanically closed with the flange 14 above and flange 21 below being open ended (see Figure 1). It is respectfully submitted that the rejection appears to misconstrue the walls of the bag of the Ausnit '962 reference with the walls of the reclosable tape of the claimed invention. The Ausnit '962 reference neither suggests nor teaches the presently claimed structure. As a result, Ausnit '962 reference does not anticipate claim 39 or dependent claim 41.

Similarly, claim 72 of the present invention recites a tape having a U-shaped loop formed between and joining a first wall

to a second wall, the first wall including a flange section, the tape further including a non-sealable inside surface. The Ausnit '962 reference recites an arrowhead shaped rib and a complementary groove formation (col. 2, lines 44-48). This arrowhead shaped rib and groove formation is mechanically closed with the flange 14 above and the flange below 12 open ended (see Figure 1). The Ausnit '962 reference neither suggests nor teaches a tape as claimed by claim 72. As a result, the Ausnit '962 reference does not anticipate claim 72 or dependent claim 74 of the present application.

2. Are Claims 39, 41 and 72-74 anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 4,528,224 (the Ausnit '224 reference)?

Claim 39 recites a tape comprising a first wall, a second wall and a U-shaped loop formed between and joining said first wall to said second wall, said first wall including a flange section, said tape having a reclosable fastener portion connected thereto matable to a mating fastener connected to said second wall, said mating fastener having said flange juxtaposed thereto and being substantially parallel to an end of said flange. In the Ausnit '224 reference, both hook type and arrowhead/groove type fastener strips are disclosed with two sets of fastener strips per each assembly (see Figures 1 and 2).

During manufacture, the sets of fasteners are separated at longitudinal cut lines, item numbers 22 and 35, creating two bags with open ends above the fastener strips. Similar to the previous rejection, it is respectfully submitted that the rejection appears to misconstrue the walls of the bag of the Ausnit '224 reference with the walls of the reclosable tape of the claimed invention. The Ausnit '224 reference neither suggests nor teaches a tape with this claimed structure. As a result, Ausnit reference '224 does not anticipate amended claim 39 or dependent claim 41.

Similarly, claim 72 of the present invention recites a tape having a U-shaped loop formed between and joining a first wall to a second wall, the first wall including a flange section, the tape further including a non-sealable inside surface. As stated above, the Ausnit '224 reference discloses two sets of fastener strips per each assembly. These fastener strips are separable at longitudinal cut lines 22 and 35 (col. 3, lines 58-63), thereby leaving open ends of webs 15 and 17. The Ausnit '224 reference neither suggests nor teaches a tape as recited in amended claim 72. As a result, the Ausnit '224 reference does not anticipate amended claim 72 or dependent claims 73 and 74 of the present application.

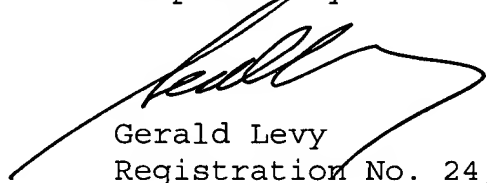
3. Are Claims 39, 41 and 72-74 obvious under 35 U.S.C. §103(a) over the Ausnit '962 reference or the Ausnit '224 reference?

It is respectfully submitted that the presently pending claims are not obvious over the cited Ausnit '962 and '224 references for the same reasons that the presently pending claims are not anticipated by the Ausnit '962 and '224 references given above. That is, the cited references neither teach or suggest the claimed structure. The above arguments are hereby incorporated by reference in response to the present rejection.

In view of the above, it is respectfully submitted that the pending claims are patentably distinct from the art of record.

The Board is respectfully requested to find all of the presently pending claims to be allowable.

Respectfully submitted,



Gerald Levy
Registration No. 24,419

Pitney, Hardin, Kipp & Szuch, LLP
685 Third Avenue
New York, New York 10017
212-297-5800

IX. APPENDIX OF PRESENTLY PENDING CLAIMS

39. A tape constructed and arranged for sealing to a web, said tape comprising a first wall, a second wall and a U-shaped loop formed between and joining said first wall to said second wall, said first wall including a flange section and further having a reclosable fastener portion connected thereto matable to a mating fastener connected to said second wall, said mating fastener having said flange juxtaposed thereto and being substantially parallel to an end of said flange, said tape having an inside surface thereof treated so as to be non-sealable and an outer surface treated so as to be sealable to said web.

41. The tape of Claim 39 in which said first wall, said second wall and said flange comprise a continuous piece of plastic material.

72. A reclosable tape for bags comprising, a reclosable interlocked fastener connected to a tape, said tape having a first wall, a second wall and a U-shaped loop formed between and joining said first wall to said second wall, said first wall including a flange section; said tape having a non-sealable

inside surface within said fold, so as to prevent sealing of said inside surface to said bags.

73. The reclosable tape of Claim 72 in which said inside surface is selected from the group consisting of an electronic corona style treated surface, a non-sealable lacquer treated surface, and a surface having a non-sealable barrier strip applied thereto.

74. The reclosable tape of Claim 72 in which said tape further comprises a web material compatible outside surface, and in which at least a portion of said inside surface is fastener compatible.